SINGAPORE REPORTS.

CHEN SU LAN v. REX.

[App. Crim. Juris. (Murray-Aynsley C. J.)
October 26, 1949]
[Singapore — Magistrate's Appeal No. 100 of 1949]

Municipal Ordinance S. 246(6) — Failure to comply with notice — Notice issued by officer of Municipal Commissioners in his own initiative — Validity of notice.

This was an appeal against the conviction of the appellant for failure to comply with a notice served under S. 246 (6) of the Municipal Ordinance. It appeared that the notice was issued by an officer of the Municipal Commissioners on his own initiative.

Held, that the notice in such cases must be given by the Municipal Commissioners or at least by their direction and cannot be given by an officer on his own initiative.

Cases referred to :—

(1) *St. Leonard Vestry v. Holmes,* 50 J.P. 132.

(2) *Bowyer, Philpott and Payne Ltd. v. Mather* (1919), 1 K.B. 419.

MAGISTRATE'S APPEAL.

Mark Morrison for the Appellant.

J. L. Harris for the Respondent.

Murray-Aynsley, C. J. : — In this case the appellant had been convicted under section 246(6) of the Municipal Ordinance for failure to comply with a notice served under that section.

This section resembles section 93 of the Public Health Act, 1936. The section, in substance, has been re-enacted from earlier Public Health Acts. As such it has received judicial interpretation. Of it *Lumley* says at p. 301, "Observe that the notice must be given by the authority, or at least by their direction; it cannot be given by an officer on his own initiative". The authorities cited are *St. Leonard Vestry v. Holmes*[1] and *Bowyer, Philpott and Payne Ltd. v. Mather*[2]. In the former Day, J. said: "It is important that the Vestry should exercise a discretion in each case, and it is not enough that the inspector does what he pleases, and then relies on his acts being afterwards approved by the Vestry".

In the present case it is clear that the notice was issued by an officer of the Commissioners on his own initiative. The notice and the subsequent proceedings are therefore bad. Various other objections were taken by the appellant but, in the circumstances, it was not necessary for me to express any opinion.

The appeal was allowed. The conviction and the nuisance order were quashed.

Appeal Allowed.

BHASKARAN AND 2 OTHERS v. REX.

[App. Crim. Juris. (Murray-Aynsley C. J.)
October 26, 1949]

[Singapore — Magistrates Appeal No. 82 of 1949]

Penal Code Ss. 116 and 161 — Charge of abetment of offence of accepting illegal gratification by public servant — Whether it is essential that public official should be capable of doing what the accused required him to do.

In this case the appellants were convicted under Sections 116 and 161 of the Penal Code on a charge of abetting the offence by a public servant of accepting gratification other than legal remuneration as a motive for showing favour in the exercise of his official duties. The learned Magistrate at the trial found as a fact that neither of the public officials in this case was capable in the proper exercise of his official functions of doing what the accused required. On appeal it was argued that for a charge under section 161 to succeed the favour to be shown must be a favour which the public servant is capable of granting.

Held, that a public official can be guilty of an offence under section 161 of the Penal Code whether or not he was in a position in the exercise of his official duties to grant the favour asked for so long as he was aware that the bribe was offered to him in the belief that he could show such favour.

Cases referred to :—

(1) *Shamsul Huq* 1921 A.I.R. (Cal.) 344.

(2) *Venkatarama Naidu* 1929 A.I.R. (Mad.) 756.

(3) *Quazi Rahimullah* 1935 A.I.R. (Pesh.) 26 at p. 29.

(4) *Ajudhia Prasad* 51 All. 456.

(5) *Phul Singh* 1942 I.L.R. Lahore 402.

MAGISTRATE'S APPEAL.

D. S. Marshall for the 1st and 2nd Appellants.

E. M. Tampoe Phillips for the 3rd Appellant.

A. V. Winslow (D. P. P.) for Respondent.

Murray-Aynsley, C. J. : — In this case the appellants were charged and convicted of abetting an offence under section 161 of the Penal Code.

The petition of appeal set out numerous grounds, some of them going to the merits, others technical. As regards merits, the chief feature of the case is the fact that neither of the prosecution witnesses spoke or understood anything but English; on the other hand, the first and second appellants do not appear to have understood or spoken any English. It appears that the first appellant had killed a person in an accident to a motor vehicle which he was driving. This accident was followed by investigations by the Naval Police in which the second prosecution witness, Morton, was concerned. It appears that the third accused approached the first prosecution witness, Noble, also a Naval